

NTSB Order No. EA-4917

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of October, 2001

Respondent .

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, issued on November 30, 1999, following an evidentiary hearing.¹ The law judge affirmed a revocation order of the Administrator, on finding that respondent had violated 49 U.S.C. 44710(b).² The law judge had

² Section 44710(b)(1) provides for lifetime revocation without possibility of requalification when, for one, a respondent is convicted of a narcotics felony punishable by imprisonment for

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earlier granted partial summary judgment, affirming the Administrator's charge that respondent had also violated 14 C.F.R. 61.15(a).³ That finding was not appealed. Thus, the issue respondent is litigating before us is the potential lifetime revocation that would accompany a finding that he violated section 44710(b)(1). We deny the appeal.

Respondent pleaded guilty to a felony -- intent to distribute marijuana. The law judge found (transcript at 87) that the offense was punishable by imprisonment for more than 1 year, a finding respondent does not appeal. Appearing in District Court in connection with his plea agreement, he acknowledged on questioning by that judge that an aircraft was used, and that he had been the pilot. During that hearing, the prosecutor laid out the facts he believed the government would prove, including that respondent had piloted the aircraft. The judge asked respondent if "the factual basis [was] essentially correct." Exhibit A-5 at 17. Respondent answered in the affirmative. Id.

Respondent argued before the law judge that his statement to

(continued...)

more than 1 year, it is found that an aircraft was used in the offense, and respondent either served as an airman or was on the aircraft in connection with committing, facilitating the commission of, or in connection with carrying out of the offense. While the Administrator has certain authority to waive this extreme sanction, she has not done so here.

³ Section 61.15(a)(2) provides that a narcotics conviction is grounds for certificate suspension or revocation. The Administrator may reinstate certificates revoked under this section and typically entertains such requests after 1 year.

the District Court judge was not meant as an admission of the facts stated by the prosecutor, but as an acknowledgment that this was what the prosecutor intended to prove. The law judge found that argument not credible and, although respondent challenges this conclusion on appeal, we have no basis to overturn it. Administrator v. Smith, 5 NTSB 1560, 1563 (1987), and cases cited there (resolution of credibility issues, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge). Further, in respondent's answer to the complaint in this case, he admitted that an aircraft was used. He also argues, however, that this factor should not be considered admitted, or proven by the Administrator by way of the District Court colloquy because he was denied due process in not being permitted to argue the circumstances of his conviction or the facts related to his statements before the District Court judge.

It is well established that we will not entertain collateral attacks on the prior criminal proceedings and the bases for them. See, e.g., Administrator v. Gilliland, NTSB Order No. EA-4149, n.7 (1994) (respondent's effort to introduce evidence regarding the circumstances that caused him to enter into the plea agreement is a collateral attack on the criminal conviction and will not be entertained). See also Administrator v. Pimental, NTSB Order No. EA-4382 (1995) (respondent not permitted to introduce factors intended to mitigate his conviction, such as that his plea was allegedly coerced). Although in this case the

circumstances are somewhat different, in that the conviction itself is not the basis for section 44710(b)(1)'s aircraft-related finding, there is no question but that respondent was the pilot on a flight transporting marijuana. Whether respondent was aware of that fact is irrelevant at this stage. Similarly, his reasons for piloting the aircraft and any other mitigating factors were relevant at the time of the criminal proceeding, and needed to be raised then. See Administrator v. Manning, NTSB Order No. EA-4363 (1995) at n.5 (in prohibiting administrative review of the underlying criminal conviction, Congress clearly intended to preclude such collateral attacks on their validity). It is no answer to say that he did not know that his pilot's certificate could be permanently revoked as a result of the criminal proceeding.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's airman certificate shall begin 30 days from the service date indicated on this opinion and order.⁴

CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. BLAKEY, Chairman, did not participate.

⁴ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).